

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the
California Renewables Portfolio Standard
Program.

Rulemaking 04-04-026
(Filed April 22, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING REQUIRING
RESUBMISSION OF MOTIONS TO FILE UNDER SEAL**

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) have each filed requests that portions of their draft 2005 RPS procurement plans be kept under seal. PG&E has also requested that a document attached to one of its notices of ex parte communication be kept under seal.¹ The filings are:

1. Motion of Pacific Gas and Electric Company (U 39E) to File Under Seal (March 7, 2005);
2. Southern California Edison Company's (U 338-E) Motion for Confidential Treatment of Unredacted Version of its Renewable Procurement Plan pursuant to Pub. Util. Code §§ 583 and 454.5(g) and Protective Order (March 7, 2005);

¹ SCE and SDG&E have also requested protective orders, or the application of existing protective orders. These requests will be held in abeyance pending resolution of the revised motions to file under seal in response to this ruling.

3. Motion of San Diego Gas & Electric Company (U 902 E) for Authority to File and Maintain Confidential, Commercially Sensitive, Proprietary Information under Seal and for Protective Order (April 15, 2005);
4. Motion of Pacific Gas and Electric Company (U 39 E) for Leave to File Confidential Material under Seal (April 21, 2005).

No oppositions to the motions have been filed. Some parties have, however, noted that it is difficult for them to comment effectively on PG&E's and SCE's draft procurement plans because key information has been redacted. See, *e.g.*, Comments of the Center for Energy Efficiency and Renewable Technologies on SCE and PG&E Renewable Procurement Plans (April 21, 2005), at p. 6; Comments of the Green Power Institute on the 2005 RPS Procurement Plans of PG&E and SCE (April 21, 2005), at p. 4.

In the confidentiality motions already submitted, the utilities have relied on general statements that the information is sensitive and on previous rulings in various procurement proceedings. The Commission has, however, received new direction on confidentiality from the Legislature, with the passage of SB 1488 (Bowen). This legislation directs the Commission to review its practices with respect to confidentiality.² While a formal proceeding on this subject will be

² The legislation provides that:

The Public Utilities Commission shall initiate a proceeding to examine its practices under Sections 454.5 and 583 of the Public Utilities Code and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) to ensure that the commission's practices under these laws provide for meaningful public participation and open decisionmaking.

initiated, the Commission also understands the Legislature to have expressed its desire that the Commission look more carefully at individual requests for confidentiality, especially with respect to procurement, than has sometimes been the case in the past.

In this proceeding, the utilities should therefore resubmit the motions listed above. In making their arguments for confidential treatment, the utilities should use as their touchstone the harm to ratepayers of making the specific information public in this proceeding. They therefore must explain *with particularity* why each element of the information they deem confidential should be protected.³ For each element for which protection is sought, the moving party should explain whether that information is now public, or subject to public disclosure, in any other forum, or will be so in the next 12 months. The moving party should also specify the time period during which public access to the information would be detrimental (*e.g.*, for the next six months, during the 2005 RPS solicitation, before 2009), with an explanation of the connection between that time period and the claimed harm.

In issuing this ruling, the ALJ is in no way prejudging the outcome of the resubmitted motions. Each request will be evaluated on its merits.

The utilities' revised motions should be filed and served not later than May 12, 2005. Any oppositions should be filed and served not later than May 23, 2005.

³ Using PG&E's Table 1 as an example, the revised motion should explain why the information about incremental resource procurement by year and type of resource should be kept confidential, with respect to each year and each type (if reasons differ for different types). (Pacific Gas and Electric Company Renewable Portfolio Standard 2005 Renewable Energy Procurement Plan—Part 1 (March 7, 2005), at p. 16.

IT IS RULED that:

1. Pacific Gas and Electric Company (PG&E) shall revise its Motion of Pacific Gas and Electric Company (U 39E) to File Under Seal (March 7, 2005) in accordance with this ruling and shall file and serve the revised motion not later than May 12, 2005.

2. PG&E shall revise its Motion of Pacific Gas and Electric Company (U 39 E) for Leave to File Confidential Material under Seal (April 21, 2005) in accordance with this ruling and shall file and serve the revised motion not later than May 12, 2005.

3. SCE shall revise its Motion for Confidential Treatment of Unredacted Version of its Renewable Procurement Plan pursuant to Pub. Util. Code §§ 583 and 454.5(g) and Protective Order (March 7, 2005) in accordance with this ruling and shall file and serve the revised motion not later than May 12, 2005.

4. SDG&E shall revise its Motion of San Diego Gas & Electric Company (U 902 E) for Authority to File and Maintain Confidential, Commercially Sensitive, Proprietary Information under Seal and for Protective Order (April 15, 2005) in accordance with this ruling and shall file and serve the revised motion not later than May 12, 2005.

5. Any oppositions to the revised motions identified in paragraphs 1-4 above shall be filed and served not later than May 23, 2005.

Dated April 27, 2005, at San Francisco, California.

/s/ ANNE E. SIMON
Anne E. Simon
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have this day served the attached Administrative Law Judge's Ruling Requiring Resubmission of Motions to File Under Seal on all parties of record in this proceeding or their attorneys of record by electronic mail to those who provided electronic mail addresses, and by U.S. mail to those who did not provide e-mail addresses.

Dated April 27, 2005, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.